

## **EXHIBIT 12**

Declaration of  
Patrick Keefe

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

LOCAL 8027, AFT-NEW HAMPSHIRE, AFL-CIO, RYAN )  
 RICHMAN, JOHN DUBE and JOCEYLN MERRILL, )  
 teachers in the New Hampshire Public Schools, and )  
 KIMBERLY GREEN ELLIOTT and MEGHAN EVELYN )  
 DURDEN, parents or guardians of children in the New )  
 Hampshire public schools. )

Plaintiffs, )

v. )

FRANK EDELBLUT, in his Official Capacity as )  
 Commissioner of the DEPARTMENT OF EDUCATION )  
 (“DOE”), CHRISTIAN KIM in his Official Capacity as the )  
 Chair of the NEW HAMPSHIRE COMMISSION ON )  
 HUMAN RIGHTS, and JOHN FOMELLA in his Official )  
 Capacity as ATTORNEY GENERAL of the State of New )  
 Hampshire. )

Defendants. )

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 ANDRES MEJIA, )  
 CHRISTINA KIM PHILIBOTTE, and )  
 NATIONAL EDUCATION ASSOCIATION-NEW )  
 HAMPSHIRE, )

Plaintiffs, )

v. )

FRANK EDELBLUT, in his official capacity only as the )  
 Commissioner of the New Hampshire Department of )  
 Education, )  
 JOHN M. FORMELLA, in his official capacity only as the )  
 Attorney General of the State of New Hampshire, )  
 AHNI MALACHI, in her official capacity only as the )  
 Executive Director of the New Hampshire Commission for )  
 Human Rights, )  
 CHRISTIAN KIM, in his official capacity )  
 only as the Chair of the New Hampshire Commission for )  
 Human Rights, )  
 KEN MERRIFIELD, in his official capacity only as the )  
 Commissioner of the Department of Labor, )

Defendants. )

Civil No. 1:21-cv-01077-PB

**DECLARATION OF PATRICK KEEFE**

I, Patrick Keefe, pursuant to 28 U.S.C. § 1746, depose and say as follows:

1. I live in Merrimack County, New Hampshire.

2. I am a high school teacher at Campbell High School in Litchfield, New Hampshire. I teach Advanced Placement English Literature and Composition (“AP English”), Honors Senior English, and Grade 9 English. I have been a teacher for 22 years.

3. I am a member of NEA-NH and the Litchfield Education Association.

4. I am certified by the State Board of Education, and thus, am subject to the “Educator Code of Conduct” (N.H. Admin. Code R. Ed. 510-512) that is now embedded within N.H. Rev. Stat. Ann. (“RSA”) 193:40 (hereinafter, the “Banned Concepts Act” or the “Act”). *See* RSA 193:40, V.

5. I am offering this Declaration in my individual capacity and not on behalf of the District that employs me.

6. I have been directly impacted and harmed by the Banned Concepts Act (the “Act”) as I have been forced to change my teaching practices for fear that it might violate the Act.

7. As an AP English teacher my course is designed to prepare students for college level courses and also the Advanced Placement Exam which focuses on reading, analyzing, and writing about imaginative literature, poetry, and drama. As they read, students consider a work’s structure, style, and themes as well as its use of figurative language, imagery, and symbolism. Writing assignments include expository, analytical, and argumentative essays that require students to analyze and interpret literary works.

8. AP English teachers select literary works that require students to read and evaluate complex text by identifying, analyzing, and applying those aforementioned literary devices as well as a plethora of other literary elements. The AP exam does not require students to have read any specific texts, but certain literary texts are often present on the exam.

9. In recent years I have assigned *Heart of Darkness* by Joseph Conrad. This is a well-known literary work which often shows up on the AP exam. It has been equally criticized and celebrated for its depiction of race and 19th Century European imperialism. It remains a staple of AP and college English courses not only in the United States but across Europe.

10. AP English and Composition requires students to also study poetry. Because of its thematic similarity to *Heart of Darkness*, I also assign *The White Man’s Burden*, a poem by

Rudyard Kipling. This poem was written and takes place in the same time period as *Heart of Darkness* and shares similar themes such as colonialism, imperialism, and racism.

11. Reading these works together is a good opportunity for students to think analytically about language, imagery, symbolism, and theme within the works. They can also practice analytical skills by comparing and contrasting the works and critiquing them.

12. Before the Banned Concepts Act, in order for students to practice the skills they would see on the AP exam, I would ask them to take argumentative positions, write persuasive essays, and critique the author's style and substance.

13. Both of these writings have long histories of being critiqued which serve to inform students of how these works have been perceived through the lens of history and by various other cultures. Students could be successful in this assignment not by taking a particular position, but by showing analytic skill, persuasive writing, and thorough research. However, I cannot ask students to explore the notion of white supremacy in Kipling's *The White Man's Burden*, why he wrote it, what he may have been thinking, what his motivations were, or explore his perspective, because doing so could easily be misconstrued as teaching, instructing, inculcating or compelling my students to express belief or support for either Kipling's white supremacist ideas and writings. Conversely, condemning his writing also seems fraught since it requires first explaining why he thought what he did and in doing so, my comments could be misconstrued to be excusing or explaining away his racist views.

14. I assign *Heart of Darkness* and *The White Man's Burden* because they often appear on the AP exam but recognize that given the time period and setting they depict, they may not feel particularly relevant to students in 2023.

15. Prior to the Banned Concepts Act I would have asked students to draw on things they saw in the news, popular culture, or their own experiences and use these frameworks to inform their analysis. I do this because the state standards require students to be able to write about experiences (both their own and others), understand different cultures and experiences other than their own, and critically examine the information they receive in the media every day.<sup>1</sup> However, I am concerned about doing that now.

16. For example, a technique I might have used in the past in the unit on *Heart of Darkness* and *The White Man's Burden* is to ask students to identify and analyze contemporary forms of imperialism, colonialism, and/or racism. However, in light of the Act, I am no longer comfortable asking students to freely identify instances of racism or colonialism, or the movements opposing those ideologies, in contemporary society for fear that it will be perceived that I am teaching that these ideas or movements opposing them are either good or bad or somehow correct or incorrect or an answer I am requiring them to give.

17. I have the same concerns with another classic book I assign. *Beloved* by Toni Morrison is a fictional account of an African American woman's experience as an enslaved person and her life afterward. The theme of the book is how the destructive legacy of slavery impacts this character.

18. Prior to the Act's passage, a technique I would use while assigning this book would be to ask students to identify whether the legacy of slavery is evident in the modern world. Could they connect any of the characters' stories to their own experiences or observations?

19. Given the Act's restrictions, I feel less comfortable placing these books in a contemporary framework and asking students, for example, if they think the Black Lives Matter movement could be considered a result of the destructive legacy of slavery or asking, "does the legacy of slavery continue and if so, how?" The Act keeps me from engaging in that discussion

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<sup>1</sup> Common Core State Standards For English Language Arts & Literacy in History/Social Studies, Science, and Technical Subjects. <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/standards-ela.pdf> Accessed July 21, 2023. See also: Ed306.37 English/Language Arts and Reading Program.

(c) "Pursuant to Ed 306.27, the local school board shall require that an English/language arts program in each high school provides":

(2) "Opportunities for students to develop proficiency and control in the use of language, an appreciation of a variety of literary forms, an understanding and appreciation of various aspects of past and present cultures as expressed in literature, and interests for lifelong learning";

(4) Systematic instruction and activities designed to enable students to:

(k): Develop study skills which contribute to academic success, such as using the dictionary, note taking, locating information, distinguishing good sources of information from bad sources, and applying information in solving of real-life problems. (emphasis added).

because I know it could easily be misunderstood as me “requiring” students to agree with the question I have posed or that there is a “correct” answer to my question. Some students will understand that I am simply “throwing it out there” for discussion while others may go home and say “my teacher told us BLM is good because it is counteracting the effects of slavery.”

20. Our students need to learn critical thinking skills such as taking in material, analyzing it, finding their own conclusions, and then formulating and defending an argument based on their conclusions. I don’t tell my students what to think because that is not teaching. I hope they will formulate their own arguments and draw their own conclusions. But in the wake of the Banned Concepts Act being passed, my job is more challenging because I am concerned a complaint will be made to the state that I have attempted to indoctrinate my students to the notion that white people are inherently racist. I do not believe this to be true in the least, but the Act is written so that any contemporary investigation of race invites a claim the Act has been violated.

21. I fear my students are losing valuable analytical training and will be ill-prepared at the college level if they cannot practice generating their own opinions on challenging works from our past and connecting them to their world today.

22. I have found that the Act is particularly limiting because parents and students misunderstand instruction techniques, such as using the Socratic method, playing devil’s advocate, or seemingly agreeing or disagreeing with a student in order to draw out analytical thinking. This misunderstanding of how teaching works and the authority of what I say while teaching is very limiting for me because it means a parent could easily misunderstand a classroom exercise and file a complaint based on their perception of what I have said.

23. I have also served as the union president for my local teacher’s union for the past three years. In this capacity, I had asked our administration for more professional development on how teachers and professional staff should avoid violating the Banned Concepts Act and I was told there was none available other than the Attorney General’s Frequently Asked Questions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21<sup>st</sup> day of July, 2023

/s/ Patrick Keefe  
Patrick Keefe